

February 28, 2001

Mr. Steven Shapiro  
City of Hampton Director of Codes Compliance  
22 Lincoln St.  
Hampton, Virginia 23669

Dear Mr. Shapiro:

Due to a recent citizen complaint, it has come to our attention that there may be some issues regarding the interpretation and implementation of the City of Hampton's Chesapeake Bay Preservation District (CBPD) regulations. According to information provided by Mr. Greg Goetz of the Planning Department and Mr. Charlie Smith of the City's Codes Compliance Department, approximately 75 trees were recently cleared from a Resource Protection Area (RPA) buffer at 109 Wilson Lane in the City of Hampton. Once notified of the clearing, City officials apparently performed a site visit on January 18 and determined that there was "no immediate danger to the environment" and subsequently allowed the contractor to resume clearing the remainder of the trees within the RPA. In this case, the landowner had not produced a "buffer restoration plan" at the time of the clearing and had continued to clear after receiving a verbal warning that a plan would be required. The landowner subsequently indicated to City officials that her reason for removing the trees was to prevent them from interfering with the functioning of her home security alarm.

While we understand the need for landowners to manage the vegetation on their property, it is both the City's and our agency's responsibility to ensure that any clearing of vegetation within Chesapeake Bay Preservation Areas is done in accordance with the Chesapeake Bay Preservation Act and Regulations (Regulations). To address this issue, we offer the following recommendations:

1. **Require City approval prior to any removal or maintenance of vegetation in the RPA.**  
Hampton's local program or policies should describe when prior approval is required and when replacement of vegetation is necessary. Before allowing any removal of vegetation, the City should review the proposal and determine if: *a) the action is allowable under the Regulations*, and *b) the clearing is limited to the minimum amount necessary to accomplish the goal*. If replacement of vegetation is necessary, a planting plan should also be required that addresses the restoration of the buffer to ensure that there will be no reduction of water quality protection.
2. **Stop any vegetative clearing actions that do not have prior approval.** Any disturbance or removal of vegetation in the RPA, whether development-related or not, is subject to the Regulations and may be

stopped by the City if it is unauthorized. In addition, the allowance of “after the fact” buffer restoration plans is not in keeping with the spirit or the intent of the Regulations and will not discourage future unauthorized buffer clearings. The City may also wish to adopt a “Penalties” section into the Chesapeake Bay Preservation District article of the Hampton Zoning Ordinance. Authority for local governments to establish civil penalties is granted under § 10.1-2109 E of the Code of Virginia.

3. **Limit the removal or alteration of buffer vegetation to only those activities allowed under § 9VAC10-20-130.B of the Regulations.** CBLAD’s interpretation of § 9VAC10-20-130.B of the Regulations would allow a landowner to perform selective cutting or pruning of trees to provide for reasonable sightlines, vistas, or access paths. Historically, our interpretation of buffer maintenance regulations has also permitted landowners to perform general horticultural practices in order to maintain the health of the buffer vegetation in addition to allowing the pruning or removal of “hazard” trees that may pose a threat to the safety or property of a landowner. In this case, however, the removal of all 75 trees in the RPA buffer appeared to have been an excessive amount of clearing to accomplish the landowner’s objective of preventing trees from affecting the function of her house alarm.

I hope this information clarifies the Department’s position on buffer maintenance actions and assists the City in guaranteeing compliance with the Chesapeake Bay Preservation Act and Regulations. CBLAD staff strongly suggests that the City provide public education in conjunction with the above initiatives, possibly in the form of a brochure to landowners in the RPA, describing the CPBD regulations and how they may affect the use of the property. For your use, I have enclosed a fact sheet that was developed by Chesterfield County to educate landowners on RPAs. The City of Hampton could apply for funding through the CBLAD competitive grants program to produce a similar product.

**To ensure that our response to the citizen complaint is adequately completed, please submit a copy of the approved buffer restoration plan for CBLAD review.** If you have any questions or need further assistance, please do not hesitate to call me at 1-800-243-7229. I would be pleased to work with the City on this matter or any other items of concern regarding the Bay Act and Regulations.

Sincerely,

Douglas G. Wetmore  
Principal Environmental Planner

enclosure

Cc: Martha Little, *CBLAD Chief of Environmental Planning*  
Shawn Smith, *CBLAD Implementation Review Officer*  
Greg Goetz, *Local Program Coordinator*

(DCR – CBLAB – 032)(12/05)